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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/622,435 | 07/18/2003 | Thai Huynh-Ba | DCS-9179 | 4957 |

34500 7590 03/25/2005

DADE BEHRING INC.
LEGAL DEPARTMENT
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DEERFIELD, IL 60015

EXAMINER

CROSS. LATOYA I

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1743

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/622,435

Applicant(s)

HUYNH-BA ET AL.

Examiner

LaToya I. Cross

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12-22-03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

The specification appears to missing reference information at page 7. It is suggested that Applicants use the patent publication number for the patent application that are being referenced.

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "80" and "82" have both been used to designate the cuvette magazine. Reference character '82' is used repeatedly throughout the specification, however, it is not shown in any of the figures.
2. The drawings are also objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "80" has been used to designate both anti-wicking fillets (page 7) and cuvette magazine (page 8).
3. Further, at page 8 of the specification, "Rails 83T" should read "Rails 83R" (line 7). "Gate 24", at line 16 should read "gate 84".
4. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant

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will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

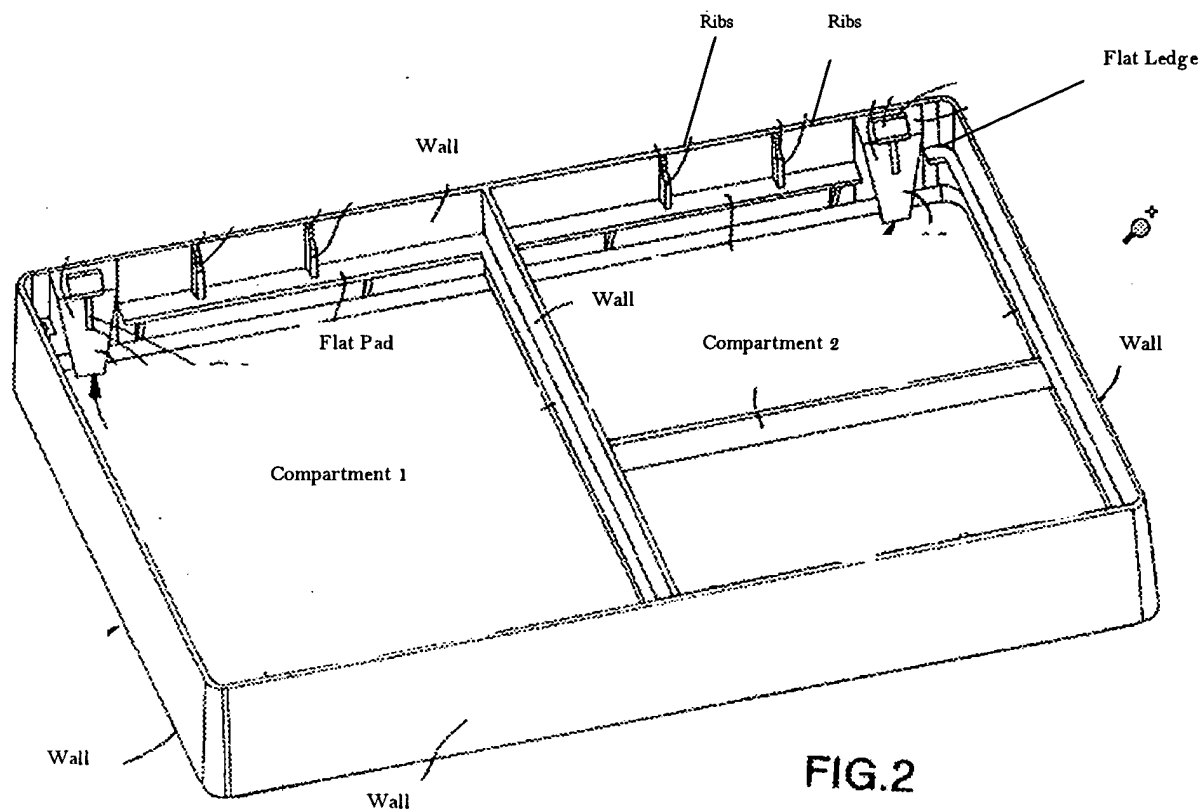
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over US patent 6,098,819 to Link in view of US patent 6,321,609 to Mengel et al.

Link teaches a magazine comprising a rectangular storage area having opposing walls (5, 6) and opposing walls (7, 8). Wall (9), in the middle of the storage area, creates two storage compartments for holding pipette tips. Within each storage compartment, there exist two pairs of ribs (25, 26) which protrude from the walls into the storage compartment. There also exists a "flat pad" and "flat ledge" that protrude into the storage compartment. Link further discloses tabs (15, 16) and hooks (21) that aid in locking one rack of pipette tips to another rack.



Link differs from the instant invention in that there is no disclosure of 1) curved front and back surfaces and 2) a hinged gate. Link further differs in that the locking means are provided on the inside of the magazine, not the outside as claimed.

Mengel et al teach a magazine for holding gas sampling tubes. The magazine (14) has multiple compartments (153) for holding the tubes. Mengel et al teach that the slots are sized corresponding to the sampling tube to be stored. The slots taught by Mengel et al are curved on a front and back side. Mengel et al further teach a door (170) to allow the tubes to pass out of the magazine and into the gas sampling system. The door pivots about a door pin/hinge and it biased closed by a torsion spring (172). See col. 7, line 35 – col. 8, line 6 and figure 6.


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It would have been obvious to one of ordinary skill in the art to use curved walls where the tubes or cuvettes being stored in the magazine are roundly-shaped, so that the tubes have a better fit in the magazine. Further, it would have been obvious to use a hinged door as a means to hold cuvettes inside the magazine or let the cuvettes move out of the magazine. The hinged door provides a mechanically simplistic means, yet effective means for holding cuvettes in their place until they are to be removed. With respect to the locking means being provided on the outside of the magazine, should would have been an obvious modification so that it would be easier for a user to separate two racks manually by lifting the rack and unhooking the tabs.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is 571-272-1256. The examiner can normally be reached on Monday-Friday 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jill Warden
Supervisory Patent Examiner
Technology Center 1700